

internal revenue officer will not, for example, change the amount claimed on the return as a deduction for depreciation because he believes that the taxpayer has claimed an excessive amount; likewise, he will not include in gross income any amount not so included by the taxpayer, even though such officer believes that such amount is subject to tax and properly should be included in gross income.

(c) *Disallowance in whole or in part.* If the district director or director of a service center finds that an application for a tentative carryback adjustment contains material omissions or errors of computation, he may disallow such application in whole or in part without further action. If, however, he deems that any error of computation can be corrected by him within the 90-day period, he may do so and allow the application in whole or in part. Such internal revenue officer's determination as to whether he can correct any error of computation within the 90-day period shall be conclusive. Similarly, his action in disallowing, in whole or in part, any application for a tentative carryback adjustment shall be final and may not be challenged in any proceeding. The taxpayer in such case, however, may file a claim for credit or refund under section 6402, and may maintain a suit based on such claim if it is disallowed or if such internal revenue officer does not act upon the claim within 6 months from the date it is filed.

(d) *Application of decrease.* (1) Each decrease determined by the district director or director of a service center in any previously determined tax which is affected by the carryback or any related adjustments shall first be applied against any unpaid amount of the tax with respect to which such decrease was determined. Such unpaid amount of tax may include one or more of the following:

- (i) An amount with respect to which the taxpayer is delinquent;
- (ii) An amount the time for payment of which has been extended under section 6164 and which is due and payable on or after the date of the allowance of the decrease; and
- (iii) An amount (including an amount the time for payment of which has been

extended under section 6162, but not including an amount the time for payment of which has been extended under section 6164) which is due and payable on or after the date of the allowance of the decrease.

(2) In case the unpaid amount of tax includes more than one of such amounts, the district director, or director of a service center in his discretion, shall determine against which amount or amounts, and in what proportion, the decrease is to be applied. In general, however, the decrease will be applied against any amounts described in subparagraph (1) (i), (ii), and (iii) of this paragraph in the order named. If there are several amounts of the type described in subparagraph (1)(iii) of this paragraph, any amount of the decrease which is to be applied against such amount will be applied by assuming that the tax previously determined minus the amount of the decrease to be so applied is "the tax" and that the taxpayer had elected to pay such tax in installments. The unpaid amount of tax against which a decrease may be applied under subparagraph (1) of this paragraph may not include any amount of tax for any taxable year other than the year of the decrease. After making such application, such internal revenue officer will credit any remainder of the decrease against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, capital loss, unused investment credit, or unused WIN credit, the time for payment of which has been extended under section 6164.

(3) Any remainder of the decrease after such application and credits may, within the 90-day period, in the discretion of the district director or director of a service center, be credited against any tax or installment thereof then due from the taxpayer, and, if not so credited, shall be refunded to the taxpayer within such 90-day period.

[T.D. 6950, 33 FR 5358, Apr. 4, 1968, as amended by T.D. 7301, 39 FR 973, Jan. 4, 1974]

**§ 1.6411-4 Consolidated groups.**

For further rules applicable to consolidated groups, see § 1.1502-78. For further rules applicable to consolidated groups that include insolvent financial

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institutions, see § 301.6402-7 of this chapter.

[T.D. 8446, 57 FR 53034, Nov. 6, 1992]

### **§ 1.6414-1 Credit or refund of tax withheld on nonresident aliens and foreign corporations.**

(a) *In general.* Any withholding agent who for the calendar year pays more than the correct amount of:

(1) Tax required to be withheld under chapter 3 of the Code, or

(2) Interest, addition to the tax, additional amount, or penalty with respect to such tax,

may file a claim for credit or refund of the overpayment in the manner and subject to the conditions stated in the Procedure and Administration Regulations (Part 301 of this chapter) under section 6402, or may claim credit for the overpayment as provided in paragraph (b) of this section.

(b) *Claim for credit on Form 1042.* The withholding agent may claim credit of an overpayment described in paragraph (a) of this section for any calendar year by showing the amount of overpayment on the return on Form 1042 for such calendar year, which shall constitute a claim for credit under this paragraph. The claim for credit shall be evidenced by a statement on the return setting forth the amount determined as an overpayment and showing such other information as may be required by the instructions relating to the return. The amount so claimed as a credit may be applied, to the extent it has not been applied under paragraph (b) of § 1.1461-4, by the withholding agent to reduce the amount of a payment or deposit of tax required by § 1.1461-3 or paragraph (a) of § 1.6302-2 for any payment period occurring in the calendar year following the calendar year of overwithholding. The amount so claimed as a credit shall also be entered on the annual return on Form 1042 for the calendar year following the calendar year of overwithholding and shall be applied as a payment on account of the tax shown on such form. If the withholding agent files a claim for credit or refund of the overpayment on Form 843 in accordance with § 301.6402-2 of this chapter (Procedure and Administration Regulations), or a claim for refund of

the overpayment on Form 1042 in accordance with § 301.6402-3 of such chapter, he may not claim credit for the overpayment under this paragraph.

(c) *Overpayment of amounts actually withheld.* No credit or refund to the withholding agent shall be allowed for the amount of any overpayment of tax which, after taking into account paragraph (b) of § 1.1464-1, the withholding agent has actually withheld from an item of income under chapter 3 of the Code.

[T.D. 6922, 32 FR 8714, June 17, 1967]

### **§ 1.6425-1 Adjustment of overpayment of estimated income tax by corporation.**

(a) *In general.* Any corporation which has made an overpayment of estimated income tax for a taxable year beginning after December 31, 1967, may file an application for an adjustment of such overpayment. The right to file an application for an adjustment of overpayment of estimated income tax is limited to corporations.

(b) *Contents of application.* (1) The application for an adjustment of overpayment of estimated income tax shall be filed on Form 4466. The application shall be filled out in accordance with the instructions accompanying the form, and all information required by the form and instructions must be furnished by the corporation. The application shall be verified in the manner prescribed by section 6065 as in the case of a return of the corporation.

(2) An application for an adjustment of overpayment of estimated income tax does not constitute a claim for credit or refund. If such application is disallowed by the district director, or director of a service center, in whole or in part, no suit may be maintained in any court for the recovery of any tax based on such application. The filing of an application for an adjustment of overpayment of estimated income tax will not constitute the filing of a claim for credit or refund within the meaning of section 6511 for the purpose of determining whether a claim for refund was filed prior to the expiration of the applicable period of limitation. The corporation, however, may file a claim for credit or refund under section 6402 at any time prior to the expiration of the